

APPEAL NO. 032811  
FILED DECEMBER 15, 2003

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing (CCH) was held on October 7, 2003. The hearing officer resolved the disputed issue by deciding that the appellant (claimant) was not entitled to supplemental income benefits (SIBs) for the first quarter, July 12 through October 10, 2003. The claimant appealed, disputing the determination of nonentitlement. The respondent (carrier) responded, urging affirmance.

DECISION

Affirmed.

We first address the claimant's complaint concerning the change of ombudsman. A review of the record does not reveal that the claimant made any request for a continuance in order to have the services of the first ombudsman or that he received inadequate ombudsman assistance at the CCH. As a general rule, the Appeals Panel does not consider matters raised for the first time on appeal. We see no reason to reverse the decision of the hearing officer and remand for another CCH with the assistance of the ombudsman that first assisted the claimant in that we find no evidence of the ombudsman having been anything but completely competent in his assistance of the claimant.

Eligibility criteria for SIBs entitlement are set forth in Section 408.142(a) and Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.102 (Rule 130.102). The SIBs criterion in issue is whether the claimant made a good faith effort to obtain employment commensurate with his ability to work during the qualifying period for the first quarter. The claimant asserted that he had no ability to work due to his compensable injury. Rule 130.102(d)(4) provides that an injured employee has made a good faith effort to obtain employment commensurate with the employee's ability to work if the employee has been unable to perform any type of work in any capacity, has provided a narrative report from a doctor which specifically explains how the injury causes a total inability to work, and no other records show that the injured employee is able to return to work. The hearing officer noted that the evidence which the claimant presented to support his contention that he was unable to work during the qualifying period consisted of only conclusory statements and a recitation of the claimant's medical and treatment history. The hearing officer further noted that even if the claimant had presented a sufficient narrative that the functional capacity evaluation in evidence showed that the claimant had the ability to engage in sedentary work. The hearing officer did not err in determining that the claimant did not satisfy the good faith requirement of Rule 130.102(d)(4) by demonstrating that he had no ability to work in the relevant qualifying periods.

We also note that there is sufficient evidence to support the hearing officer's finding that the claimant did not seek employment commensurate with his ability to work during every week of the qualifying period at issue. The Application for [SIBs] (TWCC-52) in evidence does not reflect that any employers were contacted in the course of a job search, rather the application states that the job search provision portion of the application is not applicable.

Nothing in our review of the record reveals that the challenged determinations are so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. As such, no sound basis exists for us to disturb the hearing officer's good faith determinations or the determination that the claimant is not entitled to SIBs for the first quarter on appeal. Cain v. Bain, 709 S.W.2d 175 (Tex. 1986).

The claimant contends that the CCH was a sham and implies that the hearing officer demonstrated bias in reaching her decision. Nothing in our review of the record substantiates this assertion. Additionally, the fact that the hearing officer issued a decision adverse to the claimant does not demonstrate bias but is the prerogative of the hearing officer as the sole judge of the weight and credibility of the evidence.

We affirm the decision and order of the hearing officer.

The true corporate name of the insurance carrier is **AMERICAN INTERSTATE INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**STEVE ROPER  
1616 SOUTH CHESTNUT STREET  
LUFKIN, TEXAS 75901.**

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Margaret L. Turner  
Appeals Judge

CONCUR:

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Elaine M. Chaney  
Appeals Judge

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Edward Vilano  
Appeals Judge